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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 JAMES POINT,

13 Plaintiff,

14 v.

15 UNITED STATES OF AMERICA, and
16 DOES 1-10, Inclusive,

17 Defendant.

18 UNITED STATES OF AMERICA,
19 Counterclaimant,

20 v.

21 JAMES POINT,
Counterdefendant.

No. C 07-6398 EDL

SETTLEMENT AGREEMENT

22 **SETTLEMENT AGREEMENT**

23 Plaintiff James Point and defendant United States of America hereby enter into this
24 Settlement Agreement (the "Agreement"), as follows:

25 1. The parties hereby agree to settle and compromise *James Point v. United States of*
26 *America*, United States District Court for the Northern District of California Case Number C 07-
27 6398 EDL (the "Lawsuit"), under the terms and conditions set forth herein.

28 2. The United States of America agrees to pay plaintiff the sum of Twenty Seven
Thousand Five Hundred Dollars (\$27,500.00) (the "Settlement Amount") in full settlement and

1 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
2 nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen
3 bodily and personal injuries, damage to property and the consequences thereof, resulting, and to
4 result, from the same subject matter that gave rise to the Lawsuit for which plaintiff or his heirs,
5 executors, administrators, or assigns, and each of them, now have or may hereafter acquire
6 against the United States of America, its agencies, agents, servants, or employees.

7 3. Plaintiff and his heirs, executors, administrators, and assigns hereby agree to
8 accept the Settlement Amount in full settlement and satisfaction of any and all claims, demands,
9 rights, or causes of action of whatsoever kind and nature, arising from, and by reason of any and
10 all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to
11 property and the consequences thereof which they may have or hereafter acquire against the
12 United States of America, its agencies, agents, servants, or employees on account of the same
13 subject matter that gave rise to the Lawsuit. Plaintiff and his heirs, executors, administrators, and
14 assigns further agree to reimburse, indemnify, and hold harmless the United States of America,
15 its agencies, agents, servants, and employees from any and all such causes of action, claims,
16 liens, rights, or subrogated or contribution interests incident to or resulting from further litigation
17 or the prosecution of claims by plaintiff or his heirs, executors, administrators, or assigns against
18 any third party or against the United States of America.

19 4. This Agreement shall not constitute an admission of liability or fault on the part of
20 the United States of America, its agencies, agents, servants, or employees, and is entered into by
21 and between the parties for the purpose of compromising disputed claims and avoiding the
22 expenses and risks of litigation.

23 5. This Agreement may be pled as a full and complete defense to any subsequent
24 action or other proceeding involving any person or party which arises out of the claims released
25 and discharged by this Agreement.

26 6. The Settlement Amount represents the entire amount of the compromise
27 settlement. The parties will each bear their own costs, attorneys' fees, and expenses, and any
28 attorneys' fees or liens owed by plaintiff will be paid out of the Settlement Amount and not in
addition thereto.

1 7. It is also understood by plaintiff that, pursuant to Title 28 , Section 2678 of the
2 United States Code, attorneys' fees for services rendered in connection with this Lawsuit shall
3 not exceed 25 percent of the Settlement Amount.

4 8. Payment of the Settlement Amount will be made by a check drawn on the United
5 States Postal Service and will be made payable to "Gregory Brock State Bar Trust Account."

6 9. In consideration of payment of the Settlement Amount and this Agreement,
7 plaintiff agrees that upon notification that the settlement check is ready for delivery, he will
8 deliver to defense counsel a fully executed Stipulation for Dismissal with Prejudice of the
9 Lawsuit. Upon delivery of the Stipulation for Dismissal with Prejudice, defense counsel will
10 release the settlement check to plaintiff's counsel.

11 10. Plaintiff has been informed that payment of the Settlement Amount may take sixty
12 days or more to process, but defendant agrees to make good faith efforts to expeditiously process
13 the payment.

14 11. The parties agree that should any dispute arise with respect to the implementation
15 of the terms of this Agreement, plaintiff shall not seek to rescind the Agreement and pursue his
16 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the
17 Agreement in the United States District Court. The parties agree that the United States District
18 Court will retain jurisdiction over this matter for purposes of resolving any dispute alleging a
19 breach of this Agreement.

20 12. In consideration of payment of the Settlement Amount and this Agreement,
21 plaintiff hereby releases and forever discharges the United States of America and any and all of
22 its past and present officials, employees, agencies, agents, attorneys, successors, and assigns from
23 any and all obligations, damages, liabilities, actions, causes of action, claims, and demands of
24 any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or
25 unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

26 13. California Civil Code Section provides as follows:

27 A general release does not extend to claims which the creditor does
28 not know or suspect to exist in his favor at the time of executing
 the release, which if known by him must have materially affected

his settlement with the debtor.

Plaintiff, having been apprised of such language by his attorney, and fully understanding the same, nevertheless waives the benefits of any and all rights he may have pursuant to Section 1542 and any similar provisions of federal law. Plaintiff understands that, if the facts concerning his injuries and the liability of the defendant for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed to be true, this Agreement shall be and remain effective notwithstanding such difference.

14. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that this Agreement has been freely and voluntarily entered into by the parties with the advice of counsel, who have explained the legal effect of this Agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified, amended, or otherwise changed in any respect except by writing, duly executed by all parties and their authorized representatives.

Dated: 12-30-08


JAMES POINT
Plaintiff


Dated: 1-5-09

BROCK LAW OFFICE


GREGORY BROCK
Attorney for Plaintiff

Dated: 1/8/09

JOSEPH P. RUSSONIELLO
United States Attorney


JENNIFER S. WANG
Assistant United States Attorney
Attorneys for Defendant

PROPOSED ORDER

THE ABOVE SETTLEMENT AGREEMENT IS APPROVED, AND IT IS SO ORDERED.

Dated: January 8, 2009

HON. ELIZABETH D. LAPORTE
United States District Court

